COURT NO. 2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 1437 of 2001

Himanchal Parivahan Nigam
Nahan Depot, Nahan. … **Appellant.**

Versus

Smt. Urmila Devi and others … **Respondents.**

Coram : Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 (***in short the Act*** **)** against the judgment and Award, dated 28-4-2001, passed in M.A.C.T. No. 18 of 1998, Smt. Urmila Devi and others Vs. Himanchal Parivahan Nigam, by the Motor Accident Claims Tribunal/District Judge, Dehradun **(** ***hereinafter referred to as the Tribunal)***, whereby the learned Tribunal has awarded a sum of Rs. 5,85,580/- along with interest @ 9% per annum in favour of the claimants-respondent nos. 1 to 3 as against the Opposite Parties including the appellant.

Brief facts giving rise to the present appeal are that on 8-12-97 at 1.30 p.m. deceased Constable Punit Prasad, aged about 35 years was coming on his scooter No. USK-7530 from Prem Nagar to Police Kotwali Vasant Vihar and near the I.M.A. Main Gate, Dehradun, there was head-on collision with Bus No. HP-18-3573 going from Dehradun to Nahan, resulting into grievous injuries to Punit Prasad, who succumbed to his injuries on the spot. The Post Mortem of the dead body was conducted by Dr. B.S. Aswal and the F.I.R. of the accident was lodged with police on the same day at 2.15 p.m. by the pillion rider, who also sustained injuries. It is alleged that the deceased was getting monthly salary

of 4100/-. The claimants are widow and two minor sons of the deceased. On account of death of deceased, the claimants have filed the petition for Rs. 12,47,986/- as compensation. It is also alleged that the said accident was result of rash and negligent driving by the driver of the bus in question.

The Opposite Party No.1-appellant filed written statement and contested the petition. It has denied the allegations made in the petition and has further pleaded that no accident took place on the alleged date, time and place and no injury was caused to anybody. Plea of limitation had also been taken. It was also stated that there was no fault of the answering O.P. and the claimants are not entitled to any compensation.

The Opposite Party No.2-respondent No.4, who is driver of the bus in question, has also contested the petition by filing his written statement. He also denied the entire allegations and pleaded that no accident has taken place on the date, time and place. Plea of non-joinder of necessary party was also taken. It was also pleaded that there was no fault on the part of the driver.

On the pleadings of the parties, the learned Tribunal framed to issues in the case. Issue no.1 related to motor accident due to rash and negligent driving by the driver of the bus resulting in the injuries and consequent death of the deceased and Issue No. 2 was related to relief. After having both the parties and perusing the evidence on record, the learned Tribunal found that it was proved on record that the accident in question causing the death of the deceased was result of rash and negligent driving by the driver of the bus-respondent no.4 and accordingly decided the issue in affirmative in favour of the claimant-respondents 1 to 3. On Issue No.2, the learned Tribunal found that the age of the deceased at the time of accident was 35 years. However, there appears to be no dispute regarding his age. The monthly income of the deceased has

been worked out on the basis of salary certificate of the deceased showing his pay rs.4734/-. The learned Tribunal found that monthly loss of income of account of death of deceased comes to Rs. 3156/-. Ultimately, applying the multiplier of 15, the compensation has been worked out at Rs. 5,68,080/-. In addition to it, the Tribunal has also awarded Rs. 15,000/- and Rs. 2500/- as funeral expenses. Thus, total compensation worth Rs. 5,85,580/- along with interest @ 9% per annum has been awarded from the date of petition till payment, as mentioned earlier.

Aggrieved by the impugned judgment and award, the owner of the bus in question has preferred the present appeal mainly on the ground that the learned Tribunal has wrongly worked out the amount of compensation ignoring the pensionary benefits etc. being taken by the claimants and that the age of the deceased has been wrongly assessed.

We have heard the learned counsel for the appellant and have gone through the entire material on record.

The only point for consideration before us is whether the deceased was aged 35 years and whether the compensation amount is excessive as awarded by the learned Tribunal. Both the contentions raised on behalf of the appellant are not at all sustainable. The learned Tribunal has rightly held that the age of the deceased was below 35 years at the time of accident. From the record, it appears that the age of the deceased was not at all seriously challenged by the appellant before the learned Tribunal, though the driver of the bus in question was produced as witness on behalf of the appellant and even if it be presumed that the deceased was above 35 years of age, the learned Tribunal has applied a moderate multiplier of **15** in working out the amount of compensation. The entire documentary any oral evidence on record has been fully discussed by the Tribunal. In any view of the matter,

the compensation amount cannot be held to be excessive. The findings recorded by the learned Tribunal, in our opinion, do not call for any interference by this Court. Consequently, the appeal deserves dismissal.

Accordingly, the appeal is dismissed. The judgment and award under appeal is upheld. No order as to costs.

11-08-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**
RCP